

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

BEVERLY WULLNER,)	
)	
Appellant,)	
)	87-MA-16
vs.)	
)	
IOWA DEPARTMENT OF CORRECTIONS,)	ADJUDICATOR'S DECISION
)	
Appellee.)	

Appearances

For the Department of Corrections

Merrie Murray, Director of Personnel
John Sissel, Assistant Warden, Men's Reformatory

I. JURISDICTION

On August 15, 1986, Beverly Wullner was suspended from her employment as a nurse at the Iowa Men's Reformatory in Anamosa, Iowa, for seven days without pay. The parties agree that the matter is properly before the Public Employment Relations Board. A hearing was held before me on December 9, 1986 in Des Moines, Iowa. On that date, Ms. Wullner notified the Board that she would be unable to attend the hearing, and that she wished a decision to be made on the record. Because Ms. Wullner's request was received after the Department had appeared for hearing, the hearing was conducted pursuant to 621 IOWA ADMIN. CODE §2.3 (1986) which provides:

Failure to appear. If a party fails to appear after proper service of notice, the hearing officer may, if no continuance is granted, proceed with the hearing and render a decision in the absence of the party.

The Department submitted several additional exhibits, and brief testimony was received from John Sissel. Ms. Wullner was informed of the manner of the

proceedings and was provided copies of the Department's exhibits and an opportunity to review Sissel's testimony.

II. ISSUE

The issue in this case is whether the seven day suspension of Beverly Wullner was too severe, and if so, what shall be the remedy.

III. FACTS

At the time of her suspension, Wullner had been an employee of the Men's Reformatory for about eight months. The suspension was the only disciplinary action taken against her during that period. Wullner received a letter of clarification in May, 1986, regarding her interactions with other employees and the residents, and a medical error. Wullner was rated 2.75 during her first performance evaluation (3/86 to 6/86) and 3.33 in her second evaluation (7/85 to 1/86). A performance evaluation score of 2 indicates a need to improve, a score of 3 indicates competent performance, and a score of 4 indicates very good performance.

The events leading to Wullner's suspension occurred on August 7, 1986. A resident, who had a history of heart problems, arrived at the infirmary complaining of chest pains. Pat Tuel, an emergency medical technician, sent Officer Jim Nehl to get Wullner and another nurse, Ruth Sutherland, from the conference room where they were on break. Sutherland told Nehl to tell the resident to have a seat. When Nehl returned to the infirmary without Wullner and Sutherland, Tuel went to the conference room to get them. After Tuel requested the nurses' help twice, Wullner and Sutherland went to the infirmary to see the resident, checking his vital signs and ordering an EKG. The resident was then sent to a hospital. Nehl stated that less than two minutes elapsed from the time the resident sought aid to the nurses' response. The institution trains its staff to respond to an emergency within four minutes.

The incident was investigated by a personnel review committee. Wullner told the committee that she and Sutherland should have responded when Nehl requested their help.

Sissel testified that Wullner had been counseled for her poor attitude. Sissell also indicated that he felt Wullner had behaved negligently in treating another resident. Because this incident was never discussed with Wullner, I will not consider this evidence in making my decision.

The Personnel Review Committee recognized the serious nature and potential consequences of the nurses' behavior, and recommended a three day suspension. Sissel felt that the gravity of the incident warranted more severe action, and recommended a ten day suspension. Calvin Auger suspended the employee for seven days.

IV. POSITIONS OF THE PARTIES

Wullner believes that a seven day suspension is too severe. The Department argues that the gravity of the situation warrants a seven day suspension in this case.

V. DISCUSSION

The standard to review actions of this type is whether the employer had just cause to discipline the employee. In this case the Department clearly had cause to discipline Wullner. She is employed to see to the medical needs of the residents and should respond to potentially emergency situations immediately. Potential consequences of such inactions are too serious for the nurses to guess whether an emergency is occurring, even when familiar with the patient's past history. The nurses should have examined the resident when first notified of his arrival at the infirmary. Wullner acknowledged this during the committee's hearing.

Three factors lead me to conclude that the penalty here was too severe for the seriousness of the offense. The first is that unrebutted evidence in the record (Officer Nehl's written statement) indicates that less than two minutes elapsed from the time the resident arrived at the infirmary to the time Wullner examined the patient. Although the nurses should have responded immediately, this is still under the four minute response time sought by the reformatory. Second is the fact that Wullner acknowledged her mistake to the personnel review committee.

Third, and most important, is the fact that Wullner had received no discipline prior to the suspension. The purpose of progressive discipline is to correct an employee's behavior rather than merely punishing the employee. If it is not utilized, it will not work. Although progressive discipline is sometimes abandoned in cases of very serious infractions, I cannot find that Wullner's action in this case rises to the level of seriousness warranting abandonment of progressive discipline.

Accordingly, I find that a three day suspension is appropriate in this case. This penalty takes into account both the serious nature of the employee's offense and the corrective objective of progressive discipline.

VI. AWARD

Beverly Wullner shall receive a three day suspension for not responding immediately to a potentially emergency situation on August 7, 1985. Wullner shall receive back pay and any benefits she would have accrued for the additional four days she was suspended.

DATED at Des Moines, Iowa this 20th day of January, 1987.

AMY J. MILLS
AMY J. MILLS, ADJUDICATOR